REMARKS

Claims 1-13 are pending in the instant application.

Claims 1-13 have been subjected to the following Species Election Requirement:

Species (1), an antitrichophyton;

Species (2), 1-menthol or a menthol analogue;

Species (3), a menthol analogue;

Species (4), a bactericidal compound;

Species (5), a local anesthetic;

Species (6), an antihistamine; and

Species (7) an anti-inflammatory drug.

The Examiner suggests that Applicants is required to elect a single species of (1) an anti-trichophyton, (2) 1-menthol or a menthol analogue, (4) a bactericidal compound, (5) a local anesthetic, (6) an antihistamine, and (7) an anti-inflammatory drug to which claims will be restricted if no generic claim is finally held to be allowable.

Applicants respectfully traverse this species election requirement.

At the outset, it is respectfully pointed out that the Examiner's suggestion that the species lack unity under PCT Rule 13.2 is contrary to the finding by the PCT Examiner as outlined in the International Search Report. In addition, Annex B, part (c) makes clear that unity of invention has to be considered in the first place only in relation to the

independent claims in an international application and not the dependent claims. Species 5-7 are set forth in a dependent claim. Thus, requirement for election of any of these species based upon a lack of unity is improper.

Further, Applicants disagree with the Examiner's suggestion that the special technical feature of the present invention is an element shown in Takuzo et al. (JP 08-020527). The present invention is a treatment specific for athlete's foot. In contrast, teachings of Takuzo et al. relate to a composition with improved infiltrability into keratin. As discussed at page 2 of the instant applications, the composition of Takuzo et al. does not show excellent antifungal property against *Trychophyton* and other fungi including *Candida albican* which cause athlete's foot. Accordingly, the Examiner's basis for this species election requirement is flawed.

Finally, MPEP 808.01(a) states that a requirement for restriction is permissible if there is a patentable difference between the species as claimed, **and** there would be a serious burden on the examiner if restriction is not required. Clearly, here, where the search was already performed and provided to the Examiner, there is no serious burden if restriction to the species set forth above is not made.

Accordingly, reconsideration and withdrawal of this species election requirement is respectfully requested.

However, in an earnest effort to advance the prosecution of this case, Applicants elect, in order of priority:

Species (4), isopropylmethylphenol, with traverse, with claims 1, 2, 4-6, and 8-12 being readable on the species;

Species (5), dibucaine hydrochloride, with traverse, with claims 9-13 being readable on the species;

Species (6), chlorpheniramine maleate, with traverse, with claims 9-13 being readable on the species;

Species (7), glycyrrhetinic acid, with traverse, with claims 9-13 being readable on the species;

Species (1), terbinafine hydrochloride, with traverse, with claims 1-7 and 9-12 being readable on this species; and

Species (2), 1-menthol, with traverse, with claims 1, 2 and 4-13 being readable on the species.

In accordance with MPEP § 809.01 and 37 C.F.R. § 1.146, it is respectfully pointed out that the claims should only be restricted to these species if no generic claim is held allowable. Further, upon finding the elected species to be allowable, it is Applicants' understanding that any remaining species will be examined.

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record.

Respectfully submitted,

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